

1 A Yes. I had the general format that's in Exhibit E.

2 Q Attachment E?

3 A Attachment E.

4 Q And, and you typed out Attachment E or did you write
5 it?

6 A No. My secretary typed the attachment. What I did
7 was I handwrote -- on this exact form I handwrote the
8 information and then she simply typed what I had written.

9 Q Did Ms. Covington come into your office to discuss
10 her notes or --

11 A Yes, she did.

12 Q And what's the next thing you did? After you
13 finished filling out the sheets what happened?

14 A I filled them out once with information that I
15 thought -- that I understood that counsel was asking for, and
16 then I had my secretary type up that information and I sent it
17 to counsel.

18 MS. SCHMELTZER: Your Honor, we've made copies of
19 the material Mr. Howard circulated this morning so I'd like to
20 now introduce that as Four Jacks Exhibit 18.

21 JUDGE SIPPEL: Let's get it marked for
22 identification as your Exhibit 18.

23 MS. SCHMELTZER: This is the material relating to
24 Ms. Covington that preceded -- it was used to prepare
25 Attachment E to Ms. Barr's testimony.

1 JUDGE SIPPEL: That will be marked as Four Jacks 18
2 for identification. And I am -- you may -- Mr. Howard, you
3 may want to introduce this letter into the record if you care
4 to, but at this time I'm going to read that last paragraph of
5 the July 13th letter so that it's noted in the record at this
6 -- at the time that we're considering this evidence. And that
7 letter says that -- and this is in conjunction with
8 transmitting documents in discovery on July 13, 1993 where Mr.
9 Howard writes to Mr. ^{ea}Lieder with copies to myself and to
10 Bureau counsel the following: "Finally, Janet Covington, the
11 former Public Relations Director of WMAR-TV who retired in
12 December 1991, at one time possessed personal notes that
13 recorded various ascertainment meetings in which she
14 participated during the relevant period. These notes were not
15 retained in any files at WMAR-TV. Scripps Howard recently
16 contacted Ms. Covington to ascertain whether she possessed any
17 of these notes and determined that she did not. If you have
18 any questions regarding this matter, please contact me," and
19 it's signed by Mr. Howard. All right? Go ahead.

20 (The document that was referred to as
21 Four Jacks Exhibit No. 18 was marked
22 for identification.)

23 BY MS. SCHMELTZER:

24 Q Ms. Barr, when you finished with Ms. Covington's
25 notes -- well, let me ask you this first. When you finished

1 with the calendars what did you do with them?

2 A I think I stacked them up somewhere in my office.

3 Q They were filed?

4 A At that point it wasn't in a file. It was just on
5 the floor.

6 Q And did they remain there until 1993?

7 A No. In fact, at one point I gave them back to the,
8 to the individuals who had lent them to me.

9 Q Approximately when was that?

10 A Sometime in the latter part of 1992.

11 Q Now, when you finished with Ms. Covington's notes
12 where did you place them?

13 A Probably in that same pile.

14 Q And how long did they remain in the same pile?

15 A Well, the pile grew substantially as I worked on the
16 gathering of these documents and because this particular
17 ascertainment exhibit was going through several metamorphoses,
18 I, I would -- as I -- as we made changes to it and updated it
19 I would discard the older versions of it. I didn't -- I was
20 just getting confused by having too many copies of the same
21 thing. So at some point along those -- at some point along
22 that continuum I threw the notes away because it at that point
23 didn't seem to me to be necessary to keep them.

24 Q And do you recall when that was in the continuum?

25 A I really don't recall.

1 Q Now, this -- was this exhibit constantly being
2 revised up until September of 1993?

3 A No. It was, it was really over a period of -- from
4 that summer of 1992 to, as I recall, sometime in the fall of
5 1992 when we were working on -- when I say the fall, I think
6 it was September but it was in -- it was over that summer
7 period when, when I worked on this exhibit with counsel.

8 Q Looking at Attachment E to your testimony, when was
9 that finalized?

10 MR. ZAUNER: Objection. Now, what is the relevancy
11 of when Attachment E was finalized?

12 MS. SCHMELTZER: It goes to this whole line of
13 inquiry, Your Honor. And, Your Honor, I really don't
14 understand why the Bureau is making objections that would
15 really be more properly made by Scripps Howard.

16 MR. HOWARD: We're happy to join in, Your Honor, of
17 letting the exploration go. This is an exhibit that obviously
18 is of great importance to Scripps Howard and how it was
19 prepared is an irrelevant line of inquiry, but it certainly
20 pursued it far enough to get an understanding of how the
21 exhibit was prepared.

22 JUDGE SIPPEL: I'll sustain the objection. Let's
23 move on to something more substantive.

24 BY MS. SCHMELTZER:

25 Q Now, do you recall personally discarding the notes?

1 A I, I know that I threw away a lot of paper during
2 that period of time, that a lot of it was handwritten notes
3 and things of that nature and, and I also recall filing a lot
4 of paper. I don't specifically recall throwing away those
5 notes, but I generally recall that I was getting rid of what I
6 thought was unnecessary information.

7 Q Did you ever give Ms. Covington's notes back to her?

8 A No, I did not.

9 MR. HOWARD: Objection, Your Honor. I though we
10 were going to move on to something else.

11 JUDGE SIPPEL: I'll sustain that objection. We've
12 been over that time and time and time again with respect to
13 the Covington documents and I thought we had brought that to a
14 halt when we had received the information that's now in your
15 Exhibit 18 for identification.

16 MS. SCHMELTZER: Well, I just have a few more
17 questions on that.

18 JUDGE SIPPEL: All right. Go head. Well, just --
19 you've got my ruling. I sustain the objection. Go ahead.

20 BY MS. SCHMELTZER:

21 Q Did you ever make any copies of those notes?

22 A No, I did not.

23 Q The judge read into the record the letter of your
24 counsel that's dated July 13, 1993 and that says, "These notes
25 were not retained in any files at WMAR-TV." Were they

1 retained in any other files?

2 MR. HOWARD: Your Honor, let me just state my
3 objection one more time that we're continuing on the same line
4 and I believe the objection was sustained, that this line of
5 inquiry --

6 JUDGE SIPPEL: I'm going to sustain the objection.

7 MS. SCHMELTZER: Can you tell me why when this
8 matter was reported in connection with document production
9 that it was not disclosed that these notes had been destroyed?

10 MR. HOWARD: Objection, Your Honor. It's the same
11 line of inquiry.

12 MS. SCHMELTZER: Well, Your Honor, this letter does
13 not say that.

14 MR. HOWARD: It was disclosed in the letter. In
15 advance of Ms. Barr's deposition it was disclosed.

16 MS. SCHMELTZER: Your Honor, with all due respect,
17 the letter says, "Scripps Howard recently contacted Ms.
18 Covington to ascertain whether she possessed any of these
19 notes and determined that she did not." This letter is very
20 carefully worded. It does not say that the notes were
21 destroyed.

22 JUDGE SIPPEL: Well, I think we explored this
23 sufficiently yesterday and you certainly had an opportunity
24 between July 13th depositions and the admissions session in
25 October to, to raise this as an interlocutory matter if you

1 felt that you were -- you seem to be feeling that that
2 evidence is being intentionally withheld from you. I don't
3 see anything to indicate that and I gave you considerable
4 leeway yesterday. We're really doing discovery during this
5 witness' cross-examination.

6 MS. SCHMELTZER: No. I think this all goes to the
7 preparation of a very critical exhibit in this case,
8 Attachment E.

9 JUDGE SIPPEL: Well, I --

10 MS. SCHMELTZER: -- and very important evidence that
11 was used to prepare this exhibit is not available.

12 JUDGE SIPPEL: Well, you've had the explanation and
13 over the objection of counsel for the other side I've given
14 you work product. I've made them produce their work product
15 which is the second best from what -- as to what's been lost.

16 MS. SCHMELTZER: Right, and I appreciate that.

17 JUDGE SIPPEL: And that's where -- this is where the
18 inquiry ends, so let's move on to substance.

19 BY MS. SCHMELTZER:

20 Q Now, I would like you to take a look, Ms. Barr, at
21 Four Jacks Exhibit 18 which is the materials that you
22 initially sent your counsel about the Covington interviews.
23 Is that correct?

24 A With the latest issue ascertainment? This one?

25 Q Four Jacks Exhibit 18. It says copy with the number

1 this is work product since it was Ms. Barr that prepared this
2 material.

3 JUDGE SIPPEL: Well, it was being prepared by, by an
4 agent of the, of the party under the direction and instruction
5 of a -- of counsel for purposes and use at a hearing. It --
6 to me it's classic work product but, be that as it may, we
7 disagree on that, too. My ruling is that this is rejected and
8 I want you to move on to the next question.

9 (The document that was previously
10 marked for identification as Four
11 Jacks Exhibit No. 18 was rejected.)

12 BY MS. SCHMELTZER

13 Q Ms. Barr, you indicated that you put those notes
14 aside in a, in a pile of material after the discussions with
15 Ms. Covington in August of '92?

16 A I -- it was sometime in the summer.

17 MR. HOWARD: Your Honor, could we establish where
18 this is headed because it certainly sounds like we're on the
19 same topic that has been objected to repeatedly and repeatedly
20 sustained.

21 BY MS. SCHMELTZER:

22 Q Well, let me direct the witness to footnote 6 of
23 your testimony, SH3-16.

24 A I'm sorry. Where are you?

25 Q Scripps Howard Exhibit 3, page 16, footnote 6.

1 JUDGE SIPPEL: Is this footnote 6 of her testimony?
2 MS. SCHMELTZER: Right.
3 WITNESS: What page? I'm sorry.
4 BY MS. SCHMELTZER: Page 16. If you look at the
5 last sentence of that it says, "It did not occur to me to
6 preserve Ms. Covington's handwritten notes after our
7 discussions?
8 MR. HOWARD: Your Honor, it's the same --
9 MS. SCHMELTZER: Am I correct that you --
10 MR. HOWARD: -- exact same matter.
11 JUDGE SIPPEL: Let me hear this. Let me hear the
12 question --
13 MS. SCHMELTZER: I haven't asked the question.
14 JUDGE SIPPEL: -- and then you can make the
15 objection.
16 MS. SCHMELTZER: Am I correct that you did preserve
17 Ms. Covington's handwritten notes for a period of time after
18 your discussions?
19 MR. HOWARD: Your Honor, that's asked and answered
20 repeatedly.
21 JUDGE SIPPEL: I'm going to sustain the objection.
22 MS. SCHMELTZER: She has not answered that question.
23 JUDGE SIPPEL: Well, you had your chance yesterday.
24 She was on this stand for -- in excess of 30 minutes going
25 down this whole line of questioning and I'm, I'm not going to

1 permit you to keep coming back to it at later times. That was
2 the time that you had your opportunity and you had many more
3 opportunities starting with July 13th. This lady's got to
4 finish her testimony.

5 BY MS. SCHMELTZER:

6 Q Ms. Barr, turning to page 2 of Attachment E -- do
7 you have Attachment E in front of you?

8 A Yes.

9 Q Now, I take that all of this material -- all of the
10 information that's imparted on this page was given to you by
11 Ms. Covington?

12 A Yes.

13 Q Was Ms. Covington the president of the Fuel Board?

14 MR. HOWARD: I'm sorry, counsel. What page are you
15 on?

16 MS. SCHMELTZER: Page 2 of Attachment E.

17 MR. HOWARD: Oh, I'm sorry.

18 MS. SCHMELTZER: SH3-0226.

19 MR. HOWARD: Thank you.

20 BY MS. SCHMELTZER:

21 Q Was Ms. Covington the president of the Fuel Fund of
22 Central Maryland?

23 A At that time I believe she was.

24 Q So she had a meeting with Rebecca Warren concerning
25 an organization of which she was the president? Is that

1 Q Ms. Barr, what did you do with the documentation you
2 received from NBC after you received it? Did you keep that at
3 the station?

4 A I stated earlier that I made a Xerox copy of it and
5 then I sent the copies to counsel.

6 Q Did you also keep a copy at the station?

7 A Yes, I did.

8 Q And what did you do with the correspondence with
9 NBC? Did you keep that at the station?

10 A The -- are you talking about the memo that's Exhibit
11 --

12 Q Exhibit 19.

13 A -- 19?

14 Q Right.

15 A It went into a file at the station.

16 Q And did it remain in that file at the station?

17 A Yes, it did.

18 Q Until you were asked to produce it in this
19 proceeding?

20 A That's correct.

21 Q And that was as of October -- as of the judge's
22 ruling about a week ago?

23 A I think. I don't remember the date, but yes, it was
24 recently.

25 Q This is the letter that you faxed to NBC on August

1 10, 1992?

2 MR. HOWARD: Your Honor, I object to this line of
3 inquiry as being redundant. We've gone through this material
4 as well before, how this document came to be produced.

5 JUDGE SIPPEL: Why are we doing this?

6 MS. SCHMELTZER: Your Honor, you indicated that I
7 could go into this. This is the letter that was just produced
8 last week.

9 JUDGE SIPPEL: For what purpose did I say you could
10 go into this now?

11 MS. SCHMELTZER: This was the correspondence with
12 NBC that asked for documents back in 1992.

13 JUDGE SIPPEL: Well, we've -- you've gotten part of
14 this in the record now, your Exhibit 19. Isn't that right?

15 MS. SCHMELTZER: Right.

16 JUDGE SIPPEL: And we've already examined the
17 witness on it. Are you concerned about its -- the process by
18 which it was turned over to you?

19 MS. SCHMELTZER: Yes.

20 JUDGE SIPPEL: Well, why? What's there to indicate
21 that there's a problem?

22 MS. SCHMELTZER: Well, I'd like to ask Ms. Barr why
23 she told me at her deposition on July 16th that she did not
24 have a copy of this letter.

25 JUDGE SIPPEL: All right.

1 MR. HOWARD: Your Honor, discovery is -- it was
2 recognized that she made a mistake and the letter has now been
3 produced.

4 MS. SCHMELTZER: I don't think it's been testified
5 to.

6 JUDGE SIPPEL: Well, she wanted to cross-examine.
7 She thinks she -- I understand. I understand. Go ahead.

8 BY MS. SCHMELTZER:

9 Q Do you recall telling me at your deposition, Ms.
10 Barr, that you didn't have a copy of this letter?

11 A Yes, I do.

12 Q Well, when did you discover the copy of the letter?

13 A After I went back through my files on several
14 occasions and I found it.

15 Q That was after your deposition?

16 A After my deposition.

17 Q Approximately when after your deposition?

18 A It was not until quite recently. As soon as I found
19 it I turned it over to counsel.

20 Q And when was that?

21 A That was, as I stated a moment ago, very recently,
22 but I don't remember the exact date. I've done a lot of file
23 searching in the last two years and I just don't remember
24 every time I looked through my files and found a document.
25 I'm sorry.

1 Q And you didn't look back through your files after
2 the deposition?

3 A I -- as I just said, I have been doing a lot of
4 looking through my files for documents relating to this case
5 and I have spent a lot of time working on it and I do not
6 remember exactly how many times I went looking for this
7 document. I know that when I found it I turned it over to
8 counsel.

9 Q Was that prior to October 27, 1993 that you turned
10 it over to counsel?

11 A I don't -- I just said I don't remember the exact
12 date.

13 Q Do you have any documentation that would show when
14 you turned it over to counsel?

15 A No. I found the document in my files and I sent it
16 to counsel.

17 Q Was it after the judge ordered that it be produced?

18 A I don't -- I just --

19 MR. ZAUNER: Objection. Would she know the date the
20 judge ordered it to be produced?

21 JUDGE SIPPEL: Well, she may know that. I mean,
22 this is a relatively recent event. Let's find out what the
23 witness can answer. This is cross-examination. Do you know
24 the date that I issued an order requiring this to be produced?

25 WITNESS: I don't know the date that you issued the

1 order.

2 JUDGE SIPPEL: That was my Order 93-M685. It was
3 released on October the 29th, issued on the 27th, so counsel,
4 I'm sure, received it sometime between the 27th and the 29th.

5 MS. SCHMELTZER: We received the document by noon on
6 the 27th.

7 JUDGE SIPPEL: Well, I'm sure Scripps Howard's
8 counsel had it the same time or about that time. So you can
9 ask the questions with respect to on or about the 27th of
10 October.

11 BY MS. SCHMELTZER:

12 Q Did you, did you turn the document over to your
13 counsel on or about the 27th of October or prior to that time?

14 A Well, if you received it on the 27th, I turned it
15 over to them prior to that.

16 Q Was it the day before? Was it a few days before?

17 A I don't recall the exact date.

18 Q Do you have in mind the day that your, your counsel
19 turned it over to us? Were you aware at that point that your
20 counsel had turned the document over to us?

21 A Now, with all due respect, these orders come in --
22 literally every day there is another one of these types of
23 orders, and I, I read them all, but I don't know which one
24 came in with respect to this particular document. As soon as
25 I was asked to look for it again I found it. There were, as I

1 stated earlier, many, many files relating to this case and I
2 found it after going through the files for what was probably
3 the umpteenth time, and as soon as I found it I called counsel
4 and I advised him that I had it and I sent it to him.

5 Q But you don't recall what date that was?

6 MR. HOWARD: Objection.

7 MS. SCHMELTZER: Did you fax it to him?

8 JUDGE SIPPEL: Wait. Just a second. Just a second.
9 Yeah. What's the objection?

10 MR. HOWARD: Asked and answered.

11 JUDGE SIPPEL: All right. Sustained. I think --
12 you know, if you just keep going it's going, it's going to do
13 nothing but muddle the record. The witness is --

14 MS. SCHMELTZER: No. I had a slightly different
15 question.

16 JUDGE SIPPEL: Let's have the slightly different
17 one.

18 BY MS. SCHMELTZER:

19 Q Do you review pleadings that are filed by Scripps
20 Howard in this pleading -- proceeding?

21 A I look over what is sent to me generally, yes.

22 JUDGE SIPPEL: Are we moving to another area now?

23 MS. SCHMELTZER: No. We're still on this area.

24 MR. HOWARD: I'm going to object to this line on the
25 grounds of relevancy, Your Honor.

1 JUDGE SIPPEL: I'm, I'm getting a little bit short
2 on this point.

3 MS. SCHMELTZER: I'd like to ask, I'd like to ask
4 the witness if she reviewed the Opposition to Request for
5 permission -- yeah. I'd like to ask the witness if she
6 reviewed the Opposition to the Request for permission to file
7 an appeal of the order denying the Request for Issuance of a
8 Subpoena Duces Tecum. This was filed on October 26, 1993.

9 JUDGE SIPPEL: I'm not going to permit this. No,
10 I'm not going to permit this. The witness has testified.
11 She's given you her story in terms of what transpired from the
12 time of the deposition to the time that this, this document
13 was turned over, and that's -- as far as I'm concerned, that's
14 the end of the subject. I don't see any purpose for going
15 through documents such as you're referring to.

16 MS. SCHMELTZER: Well, the reason that I -- if I can
17 make a proffer here?

18 JUDGE SIPPEL: You can make a proffer.

19 MS. SCHMELTZER: The reason that I would like to ask
20 the witness about that is because that opposition which was
21 filed on October 26, 1993 says, "Four Jacks seeks documents
22 for a broad time period that may or may not exist," and this
23 concerns the correspondence with NBC.

24 JUDGE SIPPEL: Well, that's a pleading, but you got
25 the document. We had a conference and you got the document.

APPENDIX D

**BAKER
&
HOSTETLER**
COUNSELLORS AT LAW

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WRITER'S DIRECT DIAL NUMBER (202) 861-1580

July 13, 1993

BY HAND

Martin R. Leader, Esquire
Fisher Wayland Cooper & Leader
1225 23rd Street, NW
Suite 800
Washington, D.C. 20037-1170

Re: Scripps Howard Broadcasting Company
MM Docket 93-94
Production of Documents

Dear Martin:

The attached documents were inadvertently omitted from the documents produced on June 28, 1993 by Scripps Howard Broadcasting Company ("Scripps Howard"). The documents respond to the request for production as follows:

SH0010582 to SH0010598 respond to request (i);
SH0010599 to SH0010601 respond to request (j);
SH0010602 responds to request (e);
SH0010603 and SH0010609 respond to request (b);
SH0010610 to SH0010611 respond to request (e);
SH0010618 to SH0010621 respond to request (f);
SH0010622 responds to request (i);
SH0010623 to SH0010627 respond to resquest (b).

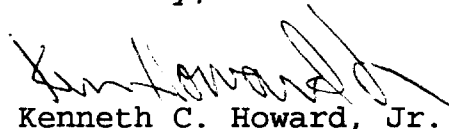
In addition, there exist two letters from Audience Research and Development (AR&D) to Bob Feldman, dated June 5, 1991 and June 19, 1991 regarding WMAR-TV's news programming. Neither of these letters relates to the substantive content of WMAR-TV's news programs. Instead, they relate to the presentation style of this news programming. The documents contain highly sensitive and proprietary information that is not relevant to any issues in this

proceeding. Scripps Howard objects to the production of these documents. If production is sought, Scripps Howard will object to such production and ask the Presiding Judge for in camera inspection of the documents.

Finally, Janet Covington, the former public relations director of WMAR-TV who retired in December, 1991, at one time possessed personal notes that recorded various ascertainment meetings in which she participated during the relevant period. These notes were not retained in any files at WMAR-TV. Scripps Howard recently contacted Ms. Covington to ascertain whether she possessed any of these notes and determined that she did not.

If you have any questions regarding this matter, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Howard Jr.", written over the typed name.

Kenneth C. Howard, Jr.
Counsel for
Scripps Howard
Broadcasting Company

cc: The Honorable Richard L. Sippel (without documents)
Norman Goldstein, Esquire (with documents)
Robert Zauner, Esquire (without documents)

APPENDIX E

35. The documents in Attachment E summarize 114 of the ascertainment interviews conducted by selected station personnel during the License Term (86 of these interviews occurred during the Renewal Period).⁶ Although it is impossible in many cases to tie specific meetings to specific programming, a number of the documents in Attachment E tie ascertainment interviews to specific news, public affairs programming, or PSA's. For example, among the ascertainment interviews discussed in Attachment E was a meeting between Norm Taylor, President of the United Way, and Mr. Kleiner on May 31, 1991 that led to airing a series of PSA's for the United Way Campaign during the License Term. See Attachment E at 1.

36. Page 10 of Attachment E reports a meeting Arnie Kleiner, Janet Covington and I held at WMAR-TV on June 6, 1991 with Dr. Sam Banks of the Baltimore City Public Schools and Hilton Bostick of the Oliver Community Association. The topics discussed at the meeting were the need for more positive images of African-Americans on television and the impact of the rising tide of urban violence and death on minorities. In part as a

⁶ The material in Attachment E was originally prepared in 1992 under my direction from information gathered by individuals working under my supervision. In preparing the attachment, I relied upon my own calendar and recollections and the calendars and recollections of Arnold Kleiner and Maria Velleggia. In addition, I relied upon discussions with and notes of Janet Covington, the former Public Affairs Director. At that time, Ms. Covington already was a former employee of the station who had volunteered to help me on her own time and who had kept these notes in her possession when she left the station. It did not occur to me to preserve Ms. Covington's handwritten notes after our discussions.

CERTIFICATE OF SERVICE

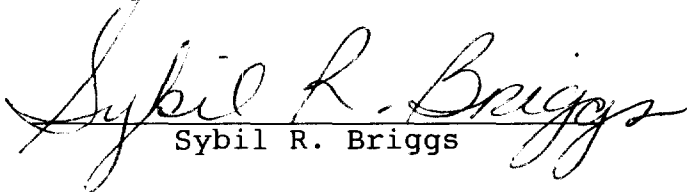
I, SYBIL R. BRIGGS, a secretary in the law firm of Fisher, Wayland, Cooper and Leader, do hereby certify that true copies of the foregoing "PETITION TO REOPEN THE RECORD AND ENLARGE THE ISSUES" were sent this 8th day of December 1993, by first class United States mail, postage prepaid, to the following:

* The Honorable Richard L. Sippel
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W., Room 214
Washington, D.C. 20554

* Robert A. Zauner, Esq.
Hearing Branch
Enforcement Division
Mass Media Bureau
Federal Communications Commission
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* Hand Delivered


Sybil R. Briggs